UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/304/Add.39
18 September 1997

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the
Elimination of Racial Discrimination

Argentina

1. At its 1228th and 1229th meetings, held on 12 and 13 August 1997, the Committee considered the eleventh to fourteenth periodic reports of Argentina submitted in a single document (CERD/C/299/Add.11) and, at its 1240th and 1241st meetings, held on 20 and 21 August 1997, adopted the following concluding observations:

A. Introduction

2. The Committee welcomes the opportunity to continue the dialogue with the State party on the basis of the eleventh to fourteenth periodic reports and the core document. The information provided orally by the delegation and the replies to the many questions asked by the members of the Committee filled gaps resulting from the brevity of the information contained in the report on some articles of the Convention and gave the Committee a clearer idea of the situation with regard to the implementation of the Convention in Argentina.

B. Factors and difficulties impeding the implementation of the Convention

3. It is noted that Argentina is going through a period of economic problems which make the implementation of the Convention more difficult, since some of the main victims of unemployment and poverty are members of indigenous populations and ethnic minorities.

C. Positive aspects

4. It is noted with satisfaction that international human rights treaties, including the Convention, rank higher than domestic law in accordance with article 75, paragraph 22, of the 1994 Constitution and that individuals have the possibility of directly invoking the provisions of the Convention in the courts.

5. The establishment, by Act No. 24284 of 1 December 1993, of the post of Ombudsman as an independent body that is responsible for protecting the rights and interests of individuals and communities against acts or omissions by the national public administration and has the possibility of instituting inquiries either on its own initiative or at the request of an individual is welcomed as a positive measure.

6. It is noted with satisfaction that, under article 43 of the 1994 Constitution, an application for amparo may be filed in the event of discrimination of any kind.

7. A number of constitutional provisions on indigenous peoples introduced during the amendment of the 1994 Constitution are a definite step forward. This is true, for example, of the granting of legal personality to indigenous communities; guarantees of respect for the cultural identity of such communities; possession and community land ownership; and the participation of indigenous persons in the management of natural resources and in other activities of concern to them.

8. The establishment in the Ministry of the Interior of the National Institute to Combat Discrimination, Xenophobia and Racism, which was given the responsibility by Act No. 242.515 of 20 July 1995 of developing national policies and practical measures to combat discrimination, xenophobia and racism, is welcomed with satisfaction.

9. It is also noted that the National Institute to Combat Discrimination, Xenophobia and Racism has adopted important measures relating to bilingual and cross-cultural education, the integration of indigenous scholarship students in the traditional school system and financial assistance for projects to raise the standard of living of certain communities. The projects being implemented for the Wichi ethnic group in the Chaco region are particularly welcomed.

10. The steps the Indigenous Communities' Institute has taken with a view to the transfer of estate land to the indigenous communities that have always occupied it by working, inter alia, in cooperation with the provincial authorities on the regularization of title deeds are welcomed with satisfaction.

11. In connection with article 5 of the Convention, the conclusion of a bilateral agreement with Bolivia to regularize the situation of some 500,000 Bolivians living illegally in Argentina, as well as the legalization of the situation of 250,000 foreigners in Argentina under Decree No. 1033/92, are welcomed with satisfaction.

12. The establishment of the Refugee Eligibility Committee and its close cooperation with the Office of the United Nations High Commissioner for Refugees are regarded as positive.

13. The adoption of Decree No. 232/92, providing that documents on Nazi criminals are no longer confidential for reasons of State, as a means of speeding up investigations in connection with persons who might have taken refuge in Argentine territory, and the establishment in 1992 of the Commission to Shed Light on Nazi Activities in Argentina are regarded as positive.

14. The organization of seminars and training programmes on human rights and the prevention of racial discrimination for judges and the staff of the Federal Prison Service is noted with satisfaction.

15. Great importance is also attached to the implementation, by the Ministry of the Interior, of the National Anti-Discrimination Programme, which is designed to support popular education programmes proposed by non-governmental organizations and provides for the possibility of emergency action to deal immediately with discriminatory acts.

D. Principal subjects of concern

16. The lack of information on the representation of indigenous peoples and other ethnic minorities in the civil service, the police, the judicial system, the Congress and the socio-economic life of the country in general is regretted, since it hampers a full evaluation by the Committee of the implementation of the provisions of the Convention relating to such peoples.

17. Noting with satisfaction that racial motivation is regarded by Act No. 23-529 of 1988 as an aggravating circumstance in the case of various offences punishable by criminal law, the Committee regrets that the provisions of article 4 of the Convention have not been fully implemented by means of provisions on specific offences constituted by the acts referred to in that article, such as the dissemination of and propaganda for racist ideas, incitement to racial discrimination, racial violence and the establishment of racist organizations.

18. The scant information on the implementation of the provisions of article 5 of the Convention is regretted, although reference is made to discrimination against members of indigenous populations and minorities in the enjoyment of certain rights, particularly those provided for in article 5 (e) (i), (iv) and (v) of the Convention.

19. With regard to the transfer of estate land to indigenous communities, it is noted with concern that problems continue to exist in practice and that, in some cases, enormous difficulties, which are often caused by land owners, are delaying these transfers. It is also noted with concern that some communities have been subjected to intimidation and pressure to give up their claims to such land. It is also regretted that information has not be provided on procedures for the consultation of indigenous communities during the land transfer process.

20. It is regretted that there is still a lack of information on remedies filed, rulings handed down and compensation granted for acts of racism, as well as on amparo proceedings instituted as a result of discrimination. This lack of information does not enable the Committee to determine to what extent article 6 of the Convention is being implemented in Argentina or to assess the role and shortcomings of the judicial authorities in this regard.

E. Suggestions and recommendations

21. The Committee recommends that additional information should be provided in the next report on the statutes, membership and activities of the National Institute to Combat Discrimination, Xenophobia and Racism, on the National Institute of Indigenous Affairs and on the implementation of the National Anti-Discrimination Programme.

22. The Committee requests the State party to include any available information in its next report on the socio-economic situation of the members of indigenous communities and ethnic minorities, particularly their participation in the political and economic life of the country and their representation in federal and provincial Government. It also invites the State party to provide specific information in its next report on the practical implementation of all the rights provided for in article 5 of the Convention by all inhabitants of Argentina. In this connection, the Committee draws the attention of the State party to the need to develop indicators to evaluate policies and programmes for the protection and promotion of the rights of vulnerable population groups.

23. The Committee urges the State party to fulfil its obligation under article 4 of the Convention to declare an offence punishable by law any form of racial discrimination, including the dissemination of and propaganda for racist ideas, incitement to racial discrimination, racial violence and the establishment of racist organizations.

24. With regard to the transfer of land to indigenous communities, the Committee recommends that the implementation of provisions adopted for that purpose should be closely followed by the local and federal authorities, including the judicial authorities, in order to prevent and combat any misunderstanding of such provisions. It invites the State party to report to it fully on this question in its next report by specifying to what extent indigenous peoples have been consulted during this process. In this connection, the attention of the State party is drawn to the Committee's General Recommendation No. XXIII on indigenous peoples.

25. The Committee recommends that the State party's fifteenth report should include information on the number and situation of refugees and immigrants in Argentina and on the legal regime applicable to them.

26. Recalling its decision No. 3 (45) of 16 August 1994, the Committee invites the State party to take all measures within its power to expedite the ongoing proceedings in connection with the 1992 and 1994 anti-Semitic attacks and draws its attention to articles 5 (a) and 6 of the Convention in this regard.

27. In respect of article 6 of the Convention, the Committee recommends that the next periodic report of Argentina should contain detailed information on remedies filed, rulings handed down and compensation granted for acts of racism.

28. In connection with the implementation of article 7 of the Convention, the Committee recommends that the State party should take all necessary measures to guarantee the training and education of law enforcement officials, teachers and students on human rights and the prevention of racial discrimination.

29. The Committee recommends that the eleventh to fourteenth reports of the State party and the present concluding observations should be made public and widely disseminated to the population.

30. The Committee recommends that the State party should, as soon as possible, ratify the amendments to article 8, paragraph 6, of the Convention adopted at the 14th meeting of States parties.

31. It is noted that the State party has not made the declaration provided for in article 14 of the Convention and some members of the Committee requested that consideration should be given to the possibility of making that declaration.

32. The Committee recommends that the State party's next report, due on 5 January 1998, should be an update dealing with all the points made in the present observations.